

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESERVATION OF RIGHTS OF PSA CREDITORS REGARDING BALLOTS CAST
WITH RESPECT TO SEVENTH AMENDED PLAN OF ADJUSTMENT**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Ad Hoc Group of Constitutional Debtholders (the “Constitutional Debt Group”),² the Ad Hoc Group of General Obligation Bondholders (the “GO Group”),³ the Lawful Constitutional

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

² The members of the Constitutional Debt Group and their respective holdings are set forth in the *Corrected Eleventh Supplemental Verified Statement of the Ad Hoc Group of Constitutional Debtholders Pursuant to Federal Rule of Bankruptcy Procedure 2019* [ECF No. 17342].

³ The members of the GO Group and their respective holdings are set forth in the *Thirteenth Supplemental Verified Statement of the Ad Hoc Group of General Obligation Bondholders Pursuant to Bankruptcy Rule 2019* [ECF No. 17397].

Debt Coalition (the “LCDC”),⁴ and the QTCB Noteholder Group (the “QTCB Group,”⁵ and collectively with the Constitutional Debt Group, the GO Group, and the LCDC, the “PSA Creditors”)⁶ respectfully state as follows:

STATEMENT AND RESERVATION OF RIGHTS

1. The PSA Creditors appreciate the fact that after years of protracted litigation, these cases are on the verge of concluding on a nearly-consensual basis, pursuant to, among other things, the Amended and Restated Plan Support Agreement (the “PSA”) to which the PSA Creditors are party. The PSA Creditors further understand that there has been substantial progress made in reaching an accord with one of the last stakeholders, the government of the Commonwealth of Puerto Rico, whose support is necessary to pass legislation (the “Legislation”) authorizing, among other things, the issuance of the New GO Bonds and CVIs on the terms set forth in the PSA and the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (the “Plan”) [Dkt. No. 17627].⁷

2. The passage of Legislation to implement the transactions contemplated by the Plan was a crucial component of the overall agreement reached by the PSA Creditors with the Oversight Board. And assuming that the Legislation is indeed enacted prior to the Confirmation Hearing, the PSA Creditors remain supportive of—and intend to vote to accept—the Plan, as they committed to do in the PSA.

⁴ The members of the LCDC and their respective holdings are set forth in the *Twelfth Supplemental Verified Statement of the Lawful Constitutional Debt Coalition Pursuant to Federal Rule of Bankruptcy Procedure 2019* [ECF No. 17382].

⁵ The members of the QTCB Group and their respective holdings are set forth in the *Tenth Supplemental Verified Statement of the QTCB Noteholder Group Pursuant Bankruptcy Rule 2019* [ECF No. 17296].

⁶ The PSA Creditors do not assume any fiduciary or other duties to each other or to any other entity or individual.

⁷ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

3. With only days remaining before the deadline by which creditors must cast their ballots (the “Voting Deadline”), however, the Legislation has not been enacted. To the contrary, the latest drafts being considered in the Puerto Rico House of Representatives and Senate contain provisions that would condition the Legislation’s effectiveness upon the occurrence of certain as-yet unfulfilled contingencies (and the Oversight Board has indicated that it does not support the draft Legislation in its current form).⁸ Further, recent statements made by Commonwealth legislative leadership suggest that a final vote on the Legislation might not take place, if at all, until October 18, 2021—*the very same day as the current Voting Deadline.*⁹

4. Making matters worse, certain prime brokers and custodians have been requiring holders (including certain of the PSA Creditors) to cast their ballots as early as October 8, a full ten days before the Voting Deadline. In effect, PSA Creditors are being asked to vote on the Plan before knowing whether the Legislation promised under the PSA will be enacted, or whether they really are voting to accept or reject a new and unknown “Plan B” instead.¹⁰

5. In parallel to the legislative process, the PSA Creditors continue to negotiate with the government parties over the terms of the indentures governing the issuance of the New GO Bonds and CVIs. Pursuant to the PSA, each of those documents must be in form and substance

⁸ See Statement, Financial Oversight and Management Board for Puerto Rico (Oct. 8, 2021).

⁹ See, e.g., “House Speaker Puts Off Planned Vote on GO Bond-CVI Bill Pending Certain Guarantees from Oversight Board; Summons Governor, Senate Leadership, Oversight Board to Work Toward Related Accords”, REORG RESEARCH (Oct. 7, 2021).

¹⁰ Acknowledging that the passage of Legislation was a material term of the PSA and that proceeding to confirmation without it would be inconsistent with the Oversight Board’s obligations under the PSA, counsel for the Board informed the Court that it would advise PSA Creditors in advance of the Voting Deadline whether the Board would contend that existing Commonwealth law (including legislation passed as early as 1942) (the “Existing Legislation”) satisfied the requirements of the “Legislation” contemplated by the PSA. See Transcript of Hearing at 23:5-7, *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-03283-LTS (D.P.R. July 29, 2021). On information and belief, the Existing Legislation was subsequently repealed by Act 42 of 2021 on or about September 16, 2021. The Oversight Board has not disclosed what impact the repeal of the Existing Legislation has on its proposed “Plan B,” nor has the Oversight Board provided notice to the PSA Creditors of whether it intends to move forward with Plan confirmation absent Legislation.

reasonably acceptable to the PSA Creditors, and must be filed as part of the Plan Supplement on or before October 11, 2021—three days after the date by which certain prime brokers and custodians are demanding votes from creditors.

6. Despite these uncertainties, the PSA Creditors intend to cast their ballots on the Plan in advance of the Voting Deadline, in a manner consistent with their obligations under the PSA. But they will be doing so without knowing precisely what they are affirmatively voting on—and whether the conditions requiring a favorable vote under the PSA have been satisfied.

7. Accordingly, the PSA Creditors reserve all rights, pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure and otherwise, to modify their ballots in the event that the Legislation is not in fact enacted prior to the Confirmation Hearing or the Plan Supplement as filed is not in form and substance acceptable to the PSA Creditors.

Date: October 11, 2021

G. CARLO-ALTIERI LAW OFFICES, LLC

By: /s/ Gerardo A. Carlo
Gerardo A. Carlo
USDC PR No. 112009
Telephone: (787) 247-6680
gacarlo@carlo-altierilaw.com

254 San Jose St., Third Floor
San Juan, Puerto Rico 00901
Telephone: (787) 247-6680
Facsimile: (787) 919-0527

MORRISON & FOERSTER LLP

By: /s/ Gary S. Lee
James M. Peck (admitted *pro hac vice*)
Gary S. Lee (admitted *pro hac vice*)
James A. Newton (admitted *pro hac vice*)
Andrew R. Kissner (admitted *pro hac vice*)
250 West 55th Street
New York, New York 10019
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
jpeck@mofo.com
glee@mofo.com
jnewton@mofo.com
akissner@mofo.com

Counsel for the Ad Hoc Group of Constitutional Debtholders

REICHARD & ESCALERA

By : /s/Rafael Escalera
Rafael Escalera

USDC No. 122609
escalera@reichardescalera.com

Sylvia M. Arizmendi
USDC-PR 210714
arizmendis@reichardescalera.com

Carlos R. Rivera-Ortiz
USDC-PR 303409
riverac@reichardescalera.com

255 Ponce de León Avenue
MCS Plaza, 10th Floor
San Juan, Puerto Rico 00917-1913
Telephone: (787) 777-8888

**QUINN EMANUEL URQUHART & SULLIVAN,
LLP**

Susheel Kirpalani (*pro hac vice*)
susheelkirpalani@quinnmanuel.com

Daniel Salinas
USDC-PR 224006
danielsalinas@quinnmanuel.com

Eric Kay (*pro hac vice*)
erickay@quinnmanuel.com

Zachary Russell (*pro hac vice*)
zacharyrussell@quinnmanuel.com

51 Madison Avenue, 22nd Floor
New York, New York 10010-1603
Telephone: (212) 849-7000

Co-Counsel for the Lawful Constitutional Debt Coalition

JIMÉNEZ, GRAFFAM & LAUSELL

/s/ J. Ramón Rivera Morales
J. Ramón Rivera Morales
USDC-PR Bar No. 200701
Andrés F. Picó Ramírez
USDC-PR Bar No. 302114
P.O. Box 366104
San Juan, PR 00936
Telephone: (787) 767-1030
Facsimile: (787) 751-4068
Email: rrivera@jgl.com

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

/s/ Andrew N. Rosenberg
Andrew N. Rosenberg (admitted *pro hac vice*)
Karen R. Zeituni (admitted *pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 373-3000
Email: arosenberg@paulweiss.com

WILLKIE FARR & GALLAGHER LLP

/s/ Mark T. Stancil
Mark T. Stancil (admitted *pro hac vice*)
1875 K Street, N.W.
Washington, DC 20006
Telephone: (202) 303-1133
Facsimile: (202) 303-2133
Email: mstancil@willkie.com

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

/s/ Lawrence S. Robbins
Lawrence S. Robbins (admitted *pro hac vice*)
Gary A. Orseck (admitted *pro hac vice*)
Donald Burke (admitted *pro hac vice*)
2000 K Street, N.W., 4th Floor
Washington, DC 20006
Telephone: (202) 775-4500
Facsimile: (202) 775-4510
Email: lrobbins@robbinsrussell.com

Co-Counsel for the Ad Hoc Group of General Obligation Bondholders

MORGAN, LEWIS & BOCKIUS LLP

/s/ Kurt A. Mayr

Kurt A. Mayr (admitted pro hac vice)
David L. Lawton (admitted pro hac vice)
David K. Shim (admitted pro hac vice)
One State Street
Hartford, CT 06103-3178
Tel. (860) 240-2700
Fax: (860) 240-2701
kurt.mayr@morganlewis.com
david.lawton@morganlewis.com
david.shim@morganlewis.com

Sabin Willett (admitted pro hac vice)
One Federal Street
Boston, MA 02110-1726
Tel: (617) 951-8775
sabin.willett@morganlewis.com

CORREA-ACEVEDO & ABESADA LAW OFFICES, PSC

Sergio Criado
USDC-PR No. 226307
Roberto Abesada-Agüet
USDC-PR No. 216706
Centro Internacional de Mercadeo, Torre II
90 Carr. 165, Suite 407
Guaynabo, P.R. 00968
Tel. (787) 273-8300
Fax (787) 273-8379
ra@calopsc.com
scriado@calopsc.com

Co-Counsel for the QTCB Noteholder Group